

Senate Bill 175

By: Senators Mullis of the 53rd, Hamrick of the 30th, Goggans of the 7th, Smith of the 52nd, Thomas of the 54th and others

**AS PASSED**

**AN ACT**

To amend Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to dangerous instrumentalities and practices, so as to provide for the comprehensive revision of certain provisions regarding Brady Law regulations; to require licensed gun manufacturers, importers, and dealers to conduct the National Instant Criminal Background Check; to provide for the transfer of information to the Federal Bureau of Investigation with regard to persons involuntarily hospitalized; to provide for exemptions; to provide for a penalty for compromising the security of records; to provide for the regulatory authority of political subdivisions; to amend Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and dissemination of criminal records to private persons and businesses, so as to provide for the transfer of information to the Federal Bureau of Investigation with regard to persons involuntarily hospitalized; to authorize the transfer and dissemination of certain information for purposes of the National Instant Criminal Background Check; to provide for related matters; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to dangerous instrumentalities and practices, is amended by striking Part 5 in its entirety and inserting in lieu thereof a new Part 5 to read as follows:

"Part 5

16-11-170.

Reserved.

16-11-171.

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As used in this part, the term:

- (1) 'Center' means the Georgia Crime Information Center within the Georgia Bureau of Investigation.
- (2) 'Dealer' means any person licensed as a dealer pursuant to 18 U.S.C. Section 921, et seq., or Chapter 16 of Title 43.
- (3) 'Firearm' means any weapon that is designed to or may readily be converted to expel a projectile by the action of an explosive or the frame or receiver of any such weapon, any firearm muffler or firearm silencer, or any destructive device as defined in 18 U.S.C. Section 921(a)(3).
- (4) 'Involuntarily hospitalized' means hospitalized as an inpatient in any mental health facility pursuant to Code Section 37-3-81 or hospitalized as an inpatient in any mental health facility as a result of being adjudicated mentally incompetent to stand trial or being adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of Article 6 of Title 17.
- (5) 'NICS' means the National Instant Criminal Background Check System created by the federal 'Brady Handgun Violence Prevention Act' (P. L. No. 103-159).

16-11-172.

- (a) All transfers or purchases of firearms conducted by a licensed importer, licensed manufacturer, or licensed dealer shall be subject to the NICS. To the extent possible, the center shall provide to the NICS all necessary criminal history information and wanted person records in order to complete an NICS check.
- (b) The center shall forward to the Federal Bureau of Investigation information concerning persons who have been involuntarily hospitalized as defined in this part for the purpose of completing an NICS check.
- (c) Any government official who willfully or intentionally compromises the identity, confidentiality, and security of any records and data pursuant to this part shall be guilty of a felony and fined no less than \$5,000.00 and shall be subject to automatic dismissal from his or her employment.
- (d) The provisions of this part shall not apply to:
  - (1) Any firearm, including any handgun with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898;
  - (2) Any replica of any firearm described in paragraph (1) of this subsection if such replica is not designed or redesigned to use rimfire or conventional center-fire fixed ammunition or uses rimfire or conventional center-fire fixed ammunition which is no

longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(3) Any firearm which is a curio or relic as defined by 27 C.F.R. 178.11.

16-11-173.

(a)(1) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, state-wide concern.

(2) The General Assembly further declares that the lawful design, marketing, manufacture, and sale of firearms and ammunition to the public is not unreasonably dangerous activity and does not constitute a nuisance per se.

(b)(1) No county or municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner gun shows; the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms or components of firearms; firearms dealers; or dealers in firearms components.

(2) The authority to bring suit and right to recover against any firearms or ammunition manufacturer, trade association, or dealer by or on behalf of any governmental unit created by or pursuant to an Act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public shall be reserved exclusively to the state. This paragraph shall not prohibit a political subdivision or local government authority from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or express warranty as to firearms or ammunition purchased by the political subdivision or local government authority.

(c) A county or municipal corporation may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with such local unit of government.

(d) Nothing contained in this Code section shall prohibit municipalities or counties by ordinance, resolution, or other enactment, from requiring the ownership of guns by heads of households within the political subdivision.

(e) Nothing contained in this Code section shall prohibit municipalities or counties, by ordinance, resolution, or other enactment, from reasonably limiting or prohibiting the discharge of firearms within the boundaries of the municipal corporation or county."

## **SECTION 2.**

Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and dissemination of criminal records to private persons and businesses, is amended by striking subsections (d.1) and (e) and inserting in lieu thereof new subsections (d.1), (e), and (f) to read as follows:

"(d.1)

Reserved."

"(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation in conjunction with the National Instant Criminal Background Check System in accordance with the federal 'Brady Handgun Violence Prevention Act.'

(2) The records of the Georgia Crime Information Center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the Georgia Crime Information Center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges Training Council and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. Further, notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized, or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Council of Superior Court Clerks of Georgia and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the Georgia Crime Information Center, the center shall purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

(f) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section."

**SECTION 3.**

All laws and parts of laws in conflict with this Act are repealed.